

May 9, 2013

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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **Notice of Ex Parte – CG Docket Nos. 03-123 and 10-51**
Purple Communications, Inc.

Dear Ms. Dortch:

On May 7, 2013, John Goodman, Chief Legal Officer for Purple Communications, Inc. (“Purple”) and Monica Desai, Purple’s outside counsel, met with Rebekah Goodheart, Legal Advisor to Commissioner Clyburn. Also on May 7, John Ferron, Purple’s Chief Executive Officer, Jose Feliciano from Clearlake Capital Partners, L.P., Mr. Goodman, and Ms. Desai met with Nicholas Degani, Legal Advisor to Commissioner Pai. The meetings focused on the following points regarding the Commission’s Video Relay Service (“VRS”) reform efforts:

- Critical to Purple and other competitive VRS providers is the Commission’s expeditious completion of its competition-related VRS reforms. Any rate reform that impacts competitive providers prior to the effective implementation of the contemplated structural reforms would be disastrous for the very providers who are positioned to bring efficiency to the VRS market through fair competition with the existing near-monopoly provider. By endorsing such rate compression in advance of structural reform, the Commission would be endorsing, if not virtually assuring, an industry monopoly.
- As detailed in Purple’s previous filings, these structural reforms should include addressing interoperability issues, allowing address book portability, more effective enforcement against anticompetitive behavior, and prohibiting VRS providers from receiving compensation if they require interpreter non-compete agreements.¹ These reforms are essential to fostering more robust competition, increasing efficiencies and creating a level playing field in the VRS marketplace – all essential elements of cultivating a cost-efficient supply base of VRS services. Furthermore, these reforms are crucial for public safety. For example, as

¹ See, e.g., Purple’s Comments, CG Docket Nos. 10-51 and 03-123, dated April 16, 2013 (“Purple April 16 Comments”); see also Letter from Monica Desai, Counsel, Purple, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, CG Docket Nos. 03-123, *et al.*, filed March 11, 2013; Letter from John Goodman, Chief Legal Officer, Purple Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CG Docket No. 03-123, *et al.*, dated March 1, 2013.

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illustrated in the *ex parte* filed by NorCal Services for Deaf & Hard of Hearing, the lack of interoperability between competing VRS devices creates an unacceptably dangerous situation for deaf and hard of hearing consumers.²

- Purple discussed the record support for adopting expanded VRS rate tiers. In revising the industry compensation model, the Commission must carefully balance two objectives: (i) assuring that providers' compensation is reasonable in light of their costs to deliver service, and (ii) preserving the operating health and capacity of multiple providers, to ensure both consumer choice and a competitive marketplace. These goals are best achieved through creation of expanded tiers which allow for reimbursement rates that account for disparate operating efficiencies achieved at varying volume scales. Purple has suggested that a high-volume tier beginning at 2 million minutes per month (or even at 1.5 million minutes per month, as proposed by Rolka Loube Saltzer Associates LLC), would enable a rate that more closely aligns with the volume level at which operating efficiencies are fully realized.³
- Purple also pointed out that the record supports establishing the high-volume tier at 2 million minutes. As detailed in Purple's confidential filing of September 19, 2012, the highest rate of operating leverage in a VRS business occurs when a provider grows from 1 million to 2 million minutes in monthly volume.⁴ Furthermore, given that the two providers representing the most viable near-term competition to the near-monopolist currently produce monthly minutes of approximately 750,000-1,000,000 (while the near-monopolist produces minutes of 7 million or more per month), establishing the Tier 3 floor at 1 million minutes is too low, and would assure a Tier 3 rate that either (a) overpays the near-monopolist for all high-volume minutes, or (b) underpays the competitive providers who enter Tier 3.
- Purple also suggested that the compensation rates of competitive providers must contemplate return rates that enable competitive providers to make the significant investments in infrastructure and capacity that are necessary to grow market share. Any lower-volume rate structure that does not so contemplate would be inconsistent with the primary policy objective of the reform order itself: creating a viable, competitive marketplace that operates efficiently and offers consumers a choice of providers. If Tier 3 is set at 2

² See Letter from Sheri A. Farinha, CEO, NorCal Services for Deaf and Hard of Hearing, to Marlene H. Dortch, Secretary, FCC, Notice of *Ex Parte*, CG Docket Nos. 03-123 and 10-51, dated May 6, 2013.

³ See Purple's Comments to Public Notice on Structure and Practices of the Video Relay Services Program, CG Docket Nos. 03-123 and 10-51, 16, dated Nov. 14, 2012 ("Purple Nov. 14 Comments"); Purple April 16 Comments at 8; see also Interstate Telecommunications Relay Service Fund Payment Formula and Fund Size Estimate, Rolka Loube Saltzer Associates LLC, CG Docket Nos. 03-123 and 10-51, 23, dated May 1, 2013 ("RLSA Report").

⁴ See Letter from John Goodman, Chief Legal Officer, Purple, to Marlene H. Dortch, Secretary, FCC, and Gregory Hlibok, Chief, Disability Rights Office, FCC, Notice of *Ex Parte*, CG Docket Nos. 10-51 and 03-123, filed Sept. 19, 2012.

million minutes per month, the Tier 3 rate (and the eventual unitary rate for all VRS minutes) need not provide for such infrastructure investment, as providers delivering minutes in such a tier would have achieved sufficient scale efficiencies as to reduce or obviate the need for significant investments in growth.

- In addition, given that the vast majority of all VRS minutes are generated at the high-volume tier rate, a slight rate reduction in that tier would result in significant overall TRS Fund savings, while not disproportionately impacting competitive providers attempting to achieve scale after the Commission puts in place rules to achieve a level playing field. Further support for such an expanded tier structure is found in the FCC Office of Inspector General's audit reports of 2011 cost submissions of VRS providers, which concluded that under the current rate structure: (i) Purple is not overcompensated,⁵ and (ii) the near-monopoly provider is overcompensated for their respective VRS services.⁶
- Purple also reiterated that using any formulation of industry average costs to set VRS rates is an ineffective means of establishing rates at this time, as a single VRS provider acting as a virtual monopoly contributes too heavily to such an average. As such, in an uncompetitive marketplace, use of industry average costs as the driving factor in establishing VRS rates would have the effect of eliminating any viable competition to the near-monopolist. Purple would support using industry average costs to inform the creation of the unitary rate once market reforms have taken hold, and competitors have achieved scale.
- Purple reiterated that, if the Commission elects to adopt a two-tier rate structure with Tier 1 being less than 500,000 minutes per month and Tier 2 being over 500,000 minutes per month, the Commission should implement a two-year "freeze" on rate cuts for lower-volume providers in Tier 1. This two-year "freeze" is necessary to allow time for the Commission's other competition-related VRS reforms to take effect, and for smaller providers to make the significant investments necessary to compete in the VRS marketplace.
- Purple also referred to the RLSA Report, in which the TRS Fund Administrator recommended that the Commission seek comment on alternative methods for determining compensation rates for labor-intensive VRS services.⁷ The current federal regulations require the Administrator to apply a rate-of-return methodology in its rate recommendations for VRS service, which the Administrator has suggested may not be appropriate for the

⁵ See Office of Inspector General Memorandum, Report on the Audit of the Use of Funds Disbursed to and Received by Telecommunications Relay Service Providers—Purple Communications Inc., dated Jan. 25, 2013, *available at* http://transition.fcc.gov/oig/Final_Redacted_Purple_Audit_Report_030613.pdf.

⁶ See Office of Inspector General Memorandum, dated Sept. 27, 2012, *available at* http://transition.fcc.gov/oig/Sorenson_Audit_Report_09272012_Redacted.pdf.

⁷ See RLSA Report at 23.

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labor-intensive VRS industry. This conclusion is consistent with Purple's prior comments.⁸ Purple continues to support a price cap compensation structure for VRS providers, with the tiered rates that are targeted to fairly compensate providers operating at various volume scales.

Respectfully submitted,



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⁸ See Purple Nov. 14 Comments.